RECORD AND BRIEFS

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Supreme Court of the United States

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.,
Respondents.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,

v.

STATE OF HAWAII, ET AL.,
Respondents.

On Writs Of Certiorari To The United States Courts Of Appeals For The Fourth And Ninth Circuits

BRIEF *AMICI CURIAE* OF THE UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, CATHOLIC CHARITIES USA, AND CATHOLIC LEGAL IMMIGRATION NETWORK, INC. IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[*]

The United States Conference of Catholic Bishops. The United States Conference of Catholic Bishops (the "Conference" or "USCCB") is an assembly of the leadership of the Catholic Church of the United States to which all the active Cardinals, Archbishops, and Bishops belong. The Conference seeks to coordinate and encourage Catholic activities in the United States; to protect religious liberty; to conduct religious, charitable and social welfare work at home and abroad; to aid in education; to care for migrants and refugees; and generally to further these goals through education, publication, and advocacy. When lawsuits touch upon central Catholic tenets, as this case does, the Conference files *amicus curiae* briefs to make its views known.

Our beliefs emphasize the importance of assisting the most vulnerable members of society. To that end, the Conference engages in extensive faith-based work on behalf of migrants and refugees. The Conference's Committee on Migration sets broad policies for the Church's work in the area of migration. Protecting refugees and finding long-lasting solutions to their plight is one of the Committee's highest priorities. The Committee has arranged site visits to refugee areas around the world and has called for action from the international community.

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[*] Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution to this brief's preparation or submission. All parties have consented to the filing of this brief.

The Committee also oversees the Conference's Office of Migration and Refugee Services, which is charged with "fulfill[ing] the commitment of the U.S. Catholic bishops to protect the life and dignity of the human person" by "serv[ing] and advocat[ing] for refugees, asylees, migrants, unaccompanied children, and victims of human trafficking." USCCB, *Migration and Refugee Services*, "Mission Statement," https://goo.gl/X6Hba9. Migration and Refugee Services carries out this mission by engaging in advocacy, education, refugee resettlement, and other specialized services to vulnerable populations. In fact, Migration and Refugee Services, working in collaboration with local Catholic Charities offices across the United States, is the largest refugee resettlement agency in the country, resettling about one-fourth of the refugees coming to the United States.

The moral and religious obligation to protect migrants and refugees is owed to people of all faiths, including Muslims. As the Second Vatican Council explained in *Nostra Aetate*, the Church holds Islam and its adherents in "esteem" in light of the common principles and practices of the two religions. *See Nostra Aetate*, no. 3 (1965), https://goo.gl/iSYPTo. In the same document, the Church urges Catholics to "work sincerely for mutual understanding" with their Muslim brethren, and to "promote together for the benefit of all mankind social justice and moral welfare, [and] peace and freedom." *Ibid.* Similarly, the Catholic commitment to religious freedom is rooted in respect for the dignity of *every* human person—including not only Catholics and other Christians, but Muslims and other non-Christians as well. *See Dignitatis Humanae* (1965).

Much like the Muslim migrants and refugees that the Executive Order singles out for disfavor, Catholic immigrants seeking a better life in the United States were once the targets of widespread animus. Having experienced such harsh treatment themselves, and having been the victims of discriminatory legislation motivated by religious animus, Catholics cannot be silent when other religious groups are targeted for mistreatment.

Catholic Charities USA. Catholic Charities USA is the national office for Catholic Charities agencies nationwide. For more than 100 years it has guided and supported the vast network of Catholic Charities agencies in a common mission to provide service to people in need, to advocate for justice in social structures, reduce poverty, support families, and empower communities. In 2016, Catholic Charities agencies employed more than 57,000 individuals at 2,951 service sites in 49 states, the District of Columbia, and the 5 U.S. territories. Collectively, in 2016, these agencies provided services to more than eight million poor and vulnerable persons, including assistance in the settlement of more than 23,400 refugees and in the ongoing resettlement of more than 28,000 refugees.

Since Catholic Charities' founding in 1910, its ministries have responded to the particular needs of newcomers to our country. From the influx of migrants in the late 19th and early 20th centuries to today, Catholic Charities agencies have worked to serve migrants and refugees, regardless of those individuals' religious belief. This work is motivated by the biblical experience of migration, which teaches all Cath-

olics to care for migrants. "Jesus himself was a migrant—born in a manger on a journey, he and his family fled to Egypt, and in his ministry he had 'nowhere to lay his head.' [Catholics] have been taught by Him to look for Him in the faces of migrants and to welcome the stranger." Catholic Charities USA, *Justice for Newcomers: A Catholic Call for Solidarity and Reform* at v (2005) (quoting Matthew 8:20), https://goo.gl/6BX6GH.

This gospel requirement to serve refugees and migrants regardless of religious belief has long guided the work of Catholic Charities USA. Reflective of this history, Monsignor John O'Grady, Ph.D., the executive secretary of the National Conference of Catholic Charities (now Catholic Charities USA), worked extensively to promote refugee resettlement following World War II.

Informed by its experiences and reflecting its faith and history, Catholic Charities USA continues its efforts to serve refugees and to advocate for just refugee resettlement policies. So far this year, Catholic Charities agencies, working with the U.S. Conference of Catholic Bishops, have settled 16,537 refugees and have launched a national campaign to support the ongoing needs of refugees settled in the United States.

The Catholic Legal Immigration Network, Inc. The Catholic Legal Immigration Network, Inc. ("CLINIC"), a national religious organization created in 1988 by the Conference, embraces the Gospel value of welcoming the stranger and promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of Catholic and community

legal immigration programs. CLINIC's network includes more than 300 diocesan and other affiliated immigration programs with 400 offices around the country, and employs roughly 1,200 attorneys and Department of Justice-accredited representatives who serve hundreds of thousands of citizens and immigrants each year.

As a religious organization dedicated to the fair and just administration of United States immigration laws, CLINIC is alarmed by Executive Order 13,780, titled "Protecting the Nation from Foreign Terrorist Entry into the United States," which proscribes nationals from certain majority-Muslim countries from entering the United States, temporarily suspends refugee admissions, and lowers the refugee admissions ceiling. CLINIC has a substantial interest in the Court's resolution of this case because the issues this Court will decide have a direct impact on the work of CLINIC's network and the immigrants and resettled refugees it serves. Within CLINIC's network, over 94% of legal immigration programs provide family-based immigration services, and, moreover, a majority of CLINIC's network provides legal assistance for resettled refugees. Consequently, CLINIC has a substantial interest in ensuring that intending immigrants can be united with their families, as well as refugees safely resettled, and that each group is not denied entry to the United States on constitutionally impermissible grounds like religious belief.

SUMMARY OF THE ARGUMENT

The Executive Order has both the purpose and the effect of discriminating against Muslims. Prior to issuing the Executive Order, the President announced repeatedly his desire to target Muslims for denial of entry to the United States. And the Executive Order does just that, singling out the populations of six overwhelmingly Muslim nations for sweeping immigration restrictions that apply nowhere else in the world.

Such blatant religious discrimination is repugnant to the Catholic faith, core American values, and the United States Constitution. In particular, it poses a substantial threat to religious liberty that this Court has never tolerated before and should not tolerate now. Having once borne the brunt of severe discriminatory treatment, particularly in the immigration context, the Catholic Church will not sit silent while others suffer on account of their religion as well. In the words of Elie Wiesel, "[t]he opposite of faith is not heresy, it's indifference." Elie Wiesel, *One Must Not Forget*, U.S. News & World Report, Oct. 27, 1986.

This Court should strike down the Executive Order as a violation of the Free Exercise Clause of the First Amendment.

ARGUMENT

I. THE EXECUTIVE ORDER DISCRIMINATES ON THE BASIS OF RELIGION IN VIOLATION OF THE FREE EXERCISE CLAUSE.

The Executive Order is an implementation of the Administration's repeatedly expressed antipathy to Muslims and to Islam. Indeed, prior to issuing the Executive Order, the President called for "a total and

complete shutdown of Muslims entering the United States." J.A. 124. Religious discrimination often can be difficult to identify, shrouded in neutral-sounding principles or benign-seeming justifications. *See Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 534 (1993) (recognizing that courts must "survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders" (internal quotation marks omitted)). "But this wolf comes as a wolf." *Morrison* v. *Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

Such blatant discrimination on the basis of religion is abhorrent to Catholic teaching, is inconsistent with American values, and, most importantly for present purposes, violates the Free Exercise Clause of the First Amendment. This Court should relegate the discriminatory Executive Order to the dustbin of history, so it will do no further harm. *See Korematsu* v. *United States*, 323 U.S. 214, 246 (1944) (Jackson, J., dissenting) ("[O]nce a judicial opinion . . . rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of . . . discrimination," which "then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."); *see also* Pope Francis, Address to the Joint Session of the United States Congress, 161 Cong. Rec. H6193 (daily ed. Sept. 24, 2015) ("The yardstick we use for others will be the yardstick which time will use for us.").

A. The Text and Context of the Executive Order Leave No Doubt That It Targets Muslims for Special Disfavor, Failing the Basic Requirement of Religious Neutrality.

Our Nation was founded as a refuge for religious adherents fleeing persecution. The First Amendment enshrines this dedication to religious liberty, providing that "Congress shall make no law . . . prohibiting the free exercise [of religion]." U.S. Const. amend. I. The Free Exercise Clause "'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 137 S. Ct. 2012, 2019 (2017) (quoting *Church of the Lukumi Babalu Aye*, 508 U.S. at 533, 542).

The Free Exercise Clause was a response to "historical instances of religious persecution and intolerance" in the colonial era. *Bowen* v. *Roy*, 476 U.S. 693, 703 (1986) (opinion of Burger, C.J.). The "English legacy was not a happy one" for religious liberty. Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1421 (1990). "[B]oth Roman Catholicism and extreme Protestantism . . . were suppressed," and many of the colonies were also hostile to other minority religions. *See id.* at 1421–30. "In assuring the free exercise of religion," the Framers of the First Amendment were thus acutely "sensitive to [the] recent history of those persecutions and impositions of civil disability with which sectarian majorities in virtually all of the Colonies had visited deviation in the matter of conscience." *McGowan* v. *Maryland*, 366 U.S. 420,

464 (1961) (opinion of Frankfurter, J.). Forged from this experience over the course of the last two centuries, the freedom to exercise one's own religion without government sanction has persisted as a core American value. It is a beacon of hope around the world.

Under this Court's precedent, any law that singles out the members of a particular religious faith for special disabilities must be struck down unless it survives strict scrutiny. *Church of the Lukumi Babalu Aye*, 508 U.S. at 531–32; *Emp't Div., Dep't of Human Res. of Or.* v. *Smith*, 494 U.S. 872, 894 (1990) (O'Connor, J., concurring in the judgment).

Here, the Executive Order fails this basic test of religious neutrality. The President issued the Executive Order "against a backdrop of public statements" expressing antipathy to Muslims and Islam. J.A. 179. These statements, in varying forms, called for an immigration ban on individuals from certain Muslim-majority countries. *See, e.g.*, J.A. 180 (the President asserting that "Islam hates us" and that "we can't allow people coming into the country who have this hatred"); J.A. 181 ("[W]e're having problems with Muslims coming into the country."); J.A. 1202 n.14 ("That's right, we need a TRAVEL BAN for certain DANGEROUS countries, not some politically correct term that won't help us protect our people!").

Viewed in the context of these and the many other inflammatory public statements catalogued by the lower courts in these cases, the discriminatory intent of the Executive Order—which suspended entry of nationals from six predominantly Muslim countries for

90 days, suspended the United States Refugee Admissions Program for 120 days, and reduced the number of refugees authorized to be admitted in 2017 by over 50%—is clear.

Moreover, the Executive Order's disproportionate effect on Muslims is further evidence of its discriminatory intent. *Church of the Lukumi Babalu Aye*, 508 U.S. at 535 ("Apart from the text, the effect of a law in its real operation is strong evidence of its object."). As the Fourth Circuit recognized, "Iran's [Muslim population] is 99.5%, Libya's is 96.6%, Sudan's is 90.7%, Somalia's is 99.8%, Syria's is 92.8%, and Yemen's is 99.1%." J.A. 173 n.2 (citing Pew Res. Ctr., *The Global Religious Landscape* 45–50 (2012)). The Executive Order effectuates sweeping immigration restrictions and disabilities on the entirety of these predominantly Muslim populations—and *only* these populations.

Thus, the Executive Order, which not only arises out of express hostility to Islam, but actually operates to target Muslims for special disfavor, is presumptively unconstitutional and can be justified only if it is narrowly tailored to serving a compelling government interest. *Church of the Lukumi Babalu Aye*, 508 U.S. at 531–32; *Smith*, 494 U.S. at 894 (O'Connor, J., concurring in the judgment).

B. Excluding Migrants and Refugees on the Basis of Religion Fails Strict Scrutiny and Is Unconstitutional.

In the face of such a stark display of religious discrimination, this Court should apply "the most rigorous of scrutiny" to the Executive Order, *Church of the Lukumi Babalu Aye*, 508 U.S. at 546, and strike it

down as unconstitutional. Leaving the Executive Order in place would deal a severe blow to religious freedom and set a dangerous precedent for adherents of all religious faiths.

To be sure, national security is an "interest[] of the highest order." *McDaniel* v. *Paty*, 435 U.S. 618, 628 (1978) (quoting *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972)). But the government bears a heavy burden to show that the interest is actually implicated in this case, *Gonzales* v. *O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006), and that the religious discrimination at issue is narrowly tailored to serve that interest, *Smith*, 494 U.S. at 894 (O'Connor, J., concurring in the judgment). The government has not come close to meeting this exacting burden.

On the contrary, the government has made no serious effort to demonstrate why such a sweeping anti-Muslim measure is needed for national security. Instead, following the repeated expressions of hostility to Islam noted above, the Executive Order paints the *entire* population of *entire* predominantly Muslim countries with the same broad strokes, even though none of those countries has been home to any of the terrorists that have struck the homeland before. *See* J.A. 127 ("[N]o terrorist acts have been committed on U.S. soil by nationals of the banned countries since September 11, 2001," and "no intelligence as of January 19, 2017 suggested any such potential threat.") (citing Joint Declaration of national security, foreign policy, and intelligence officials who previously served in the White House, State Department, DHS, and CIA, reproduced at J.A. 894); *see also* J.A. 178 (Fourth Circuit reliance on the same Joint Declaration);

J.A. 897 ("In our professional opinion, this Order cannot be justified on national security or foreign policy grounds."). At the same time, the Executive Order's list of countries supposedly posing "heightened risks to the security of the United States," § 1(e), conspicuously omits the countries (such as Saudi Arabia) from which the September 11th hijackers hailed. *See O Centro*, 546 U.S. at 433 ("[A] law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.") (quoting *Church of the Lukumi Babalu Aye*, 508 U.S. at 547 (quoting *Fla. Star* v. *B.J.F.*, 491 U.S. 524, 541–42 (1989) (Scalia, J., concurring in part and concurring in the judgment))) (alterations original).

What is more, U.S. intelligence services have made clear that restricting immigration from predominantly Muslim nations will not deter terrorism. Just before the President signed the Executive Order, DHS's Office of Intelligence and Analysis found that "most foreign-born, U.S.-based violent extremists became radicalized many years after entering the United States," and concluded that "increased screening and vetting was therefore unlikely to significantly reduce terrorism-related activity in the United States." J.A. 178 (citing report at J.A. 1059–60); *see also ibid.* ("[A] separate DHS report indicated that citizenship in any country is likely an unreliable indicator of whether a particular individual poses a terrorist threat.") (citing document at J.A. 1051). Such under- and over-inclusiveness "raises serious doubts about whether the government is in fact pursuing the interest it invokes." *Brown* v. *Entm't Merchs. Ass'n*, 564 U.S. 786, 802 (2011).

For these and other reasons, the Executive Order fails strict scrutiny and cannot stand. *See Church of the Lukumi Babalu Aye*, 508 U.S. at 547 (invalidating ordinances because they were "underinclusive to a substantial extent with respect to each of the interests that respondent has asserted").

II. THE CATHOLIC CHURCH TAKES A STRONG STAND AGAINST RELIGIOUS DISCRIMINATION IN ALL ITS FORMS.

Amici are deeply concerned about the Executive Order and the threat it poses to religious liberty in general and Muslims in particular. American Catholics will recall a time not too long ago when they were the targets of discriminatory immigration restrictions and nativist sentiment, often in the name of national security. Our Constitution must serve to protect migrants and refugees of all religious faiths—particularly those faiths that find themselves the subject of disfavor—and so must forbid denial of admission to the United States on the basis of religion.

A. Catholic Immigrants to the United States Have Experienced Discrimination Firsthand.

1. This Nation was founded on the belief that freedom of religion is an essential condition of a free and democratic society. As George Washington wrote in his letter to the Annual Meeting of Quakers in 1789, "the Conscientious scruples of all men should be treated with great delicacy & tenderness and it is my wish and desire that the laws may always be . . . extensively accommodated to them." George Washington, Letter to the Annual Meeting of Quakers (Oct. 13, 1789), https://goo.gl/hHo9Em.

George Washington made clear that the need for religious liberty and diversity extended to welcoming refugees and migrants of all faiths: "The bosom of America is open to receive not only the opulent & respectable Stranger, but the oppressed & persecuted of all . . . Religions; whom we shall wellcome to a participation of all our rights & previleges, if by decency & propriety of conduct they appear to merit the enjoyment." Letter from George Washington to Joshua Holmes (Dec. 2, 1783), https://goo.gl/Du9TPW.

2. Unfortunately, despite the noble ideals espoused by the founders and embodied in our Constitution, the American experience has not always been a happy one for Catholics, particularly in the context of immigration. *See* Rory Carroll, *America's Dark and Not-Very-Distant History of Hating Catholics*, The Guardian, Sept. 12, 2015. Early settlers brought "anti-Catholic bias . . . to Jamestown in 1607 and vigilantly cultivated [it] in all the thirteen colonies from Massachusetts to Georgia." John Tracy Ellis, *American Catholicism* 19 (2d ed. 1969). Colonial charters specifically singled out Roman Catholics, prohibiting them from, for example, holding political office. *See* McConnell, *supra*, 103 Harv. L. Rev. at 1423–24 (discussing anti-Catholic laws in colonies "throughout the South," where "Catholics . . . were detested and excluded").

Anti-Catholic sentiment persisted through the nation's founding. John Jay authored an address "to the People of Great Britain" on behalf of the Continental Congress accusing Parliament of plotting to "reduce the ancient, free Protestant colonies to" a "state of slavery" by encouraging Catholic emigration to North America, and thus, he wrote, promoting a religion that

"dispersed impiety, persecution, murder and rebellion through every part of the world." Address to the People of Great Britain (1774), 1 *The Correspondence and Public Papers of John Jay (1763–1781)*, https://goo.gl/KfmKFY.

In the 19th and early 20th centuries, Catholic immigrants suffered pernicious discrimination as they sought a better life for themselves and their families. The number of Catholics living in the United States had already increased from 30,000 at the time of the Founding to 600,000 by 1830. John C. Jeffries, Jr. & James E. Ryan, *A Political History of the Establishment Clause*, 100 Mich. L. Rev. 279, 299 (2001). And beginning in the 1830s, increased immigration from Ireland and Germany (and later Italy) "began to swell" the Catholic ranks. Steven K. Green, *The Blaine Amendment Reconsidered*, 36 Am. J. Leg. Hist. 38, 42 (1992). "By 1850, 1.6 million Catholics lived in America, and by 1900 that number rose to 12 million." *Zelman* v. *Simmons-Harris*, 536 U.S. 639, 720 (2002) (Breyer, J., dissenting).

"'Dreading Catholic domination,' native Protestants 'terrorized Catholics.'" *Zelman*, 536 U.S. at 720 (Breyer, J., dissenting) (quoting Philip Hamburger, *Separation of Church and State* 219 (2002)); *see also Mojica* v. *Reno*, 970 F. Supp. 130, 145 (E.D.N.Y. 1997) (observing that prejudice against Irish and Italian immigrants, primarily Catholic, "emerged as these groups emigrated in substantial numbers"). As early as 1841, Samuel Morse, the New York newspaper editor and inventor of Morse code, declared to a sympathetic audience that "the evil of immigration brings to these shores illiterate Roman Catholics . . . the obedient instruments of their more

knowing priestly leaders." Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* 56–57 (2002) (alteration original). And Josiah Strong, a prominent Protestant leader and best-selling author, included "immigration" and "Catholicism" as the first two threats on his "list of seven perils facing the nation." Jeffries & Ryan, *supra*, 100 Mich. L. Rev. at 303; *see also* Richard E. Morgan, *The Supreme Court and Religion* 47 (1972) ("The nineteenth century was pockmarked by this virulent fusion of hostility to the newcomer and inherited No-Popery.").

3. Some of the most severe hostility towards Catholics appeared in the realm of education. In the 19th century, the majority of schools were "propagators of a generic Protestantism that . . . was intolerant of those who were non-believers." Mark Edward DeForrest, *An Overview and Evaluation of State Blaine Amendments: Origins, Scope, and First Amendment Concerns*, 26 Harv. J.L. & Pub. Pol'y 551, 559 (2003) (internal quotation marks omitted). Students were frequently made to listen to or read from "the Protestant King James Bible." *Ibid.* Those who refused "suffered beatings or expulsions." *Zelman*, 536 U.S. at 720 (Breyer, J., dissenting) (quoting Jeffries & Ryan, *supra*, 100 Mich. L. Rev. at 300). Other general "[a]ttacks on the Catholic faith were commonplace, as were slurs against the Irish ethnicity of many of the new immigrants." DeForrest, *supra*, 26 Harv. J.L. & Pub. Pol'y at 559.

Recognizing that they would be unable to ensure their children learned the Church's teachings and preserve Catholic heritage in the public schools, Catholics "set up parochial schools and sought shares of the

common school fund or exemptions from taxation." Green, *supra*, 36 Am. J. Leg. Hist. at 41; *see also Zelman*, 536 U.S. at 720 (Breyer, J., dissenting).

But this approach drew significant ire from Protestant majorities, reaching a fever pitch in the 1870s "with Congress' consideration (and near passage) of the Blaine Amendment, which would have amended the Constitution to bar any aid to sectarian institutions." *Mitchell* v. *Helms*, 530 U.S. 793, 828 (2000) (plurality opinion of Thomas, J., joined by Rehnquist, C.J., and Scalia and Kennedy, JJ.); *see also* H.R.J. Res. 1, 44th Cong., 1st Sess., 4 Cong. Rec. 205 (1875). The measure followed on the heels of President Ulysses S. Grant's thinly veiled (and politically popular) attacks on Catholic schools in which he "resolv[ed] that not one dollar . . . shall be appropriated to the support of any sectarian schools" and called for a constitutional amendment "prohibiting the granting of any school funds or taxes . . . for the benefit or in aid, directly or indirectly, of any religious sect or denomination." Green, *supra*, 36 Am. J. Leg. Hist. at 47, 52 (internal quotation marks and citations omitted).

Although the text of the Blaine Amendment did not expressly use the word "Catholic," its discriminatory intent and effect—much like the Executive Order here—were unmistakable given the "pervasive hostility to the Catholic Church and to Catholics in general," as well as the "open secret that 'sectarian' was code for 'Catholic.'" *Mitchell*, 530 U.S. at 828 (plurality op.); *see also* DeForrest, *supra*, 26 Harv. J.L. & Pub. Pol'y at 564 (describing a similar proposed amendment that "had the benefit of appearing neutral while at the same time effectively targeting only the Catholic schools").

B. The Catholic Church Is Committed to Helping Migrants and Refugees of All Religious Faiths.

1. Catholics' own experience with discrimination in the United States informs the Church's commitment to advocating on behalf of migrants and refugees of all religious faiths. "Having once felt the sting of religious persecution in the United States, American Catholics understand that the majority can do great violence to the constitutional rights of an insular religious minority." Loredana Vuoto, *Could Trump's Muslim Ban Threaten Everyone's Religious Freedom?*, Catholic News Agency, Jan. 14, 2016, https://goo.gl/4qzhyV (quoting First Liberty Institute Deputy General Counsel Matthew Kacsmaryk).

Thus, as Cardinal Theodore McCarrick and others have emphasized, the Church advocates on behalf of migrants and refugees of all faiths; the mandate to speak out on their behalf arises "not because they are Catholic, but because we are Catholic." The Universal Church as Defender of the Rights of Migrants (Mar. 21, 2011) (internal quotation marks omitted), https://goo.gl/A4RLN2. Pope Francis recently explained that "American Catholics are committed to building a society which is truly tolerant and inclusive, to safeguarding the rights of individuals and communities, and to rejecting every form of unjust discrimination." Address at South Lawn of the White House (Sept. 23, 2015), https://goo.gl/nPNrtf. American Catholics "are likewise concerned that efforts to build a just and wisely ordered society respect their deepest concerns and their right to religious liberty"—"one of America's most precious possessions." *Ibid.*

2. The affirmative mandate to welcome migrants and refugees is deeply rooted in Catholicism, beginning in Scripture and continuing in modern teachings.

Abundant Biblical passages establish this core principle. For example, Exodus 23:9 teaches, "You shall not oppress a resident alien; you well know how it feels to be an alien, since you were once aliens yourselves in the land of Egypt." And Jesus later pronounced, "For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me." Matthew 25:35. Put simply, the Bible repeatedly exhorts us to "exercise hospitality." Romans 12:13.

In recent decades, the Catholic Church has reemphasized these principles. *See generally* Catholic Legal Immigration Network, Inc., *Modern Catholic Social Teaching on Immigration: Notable Quotes* (2015), https://goo.gl/3pCoeK; Todd Scribner & J. Kevin Appleby, *On Strangers No Longer: Perspectives on the Historic U.S.-Mexican Catholic Bishops' Pastoral Letter on Migration* (2013). In 1952, against the backdrop of a refugee-filled post-war Europe, Pope Pius XII promulgated the apostolic constitution *Exsul Familia*, calling upon the Church to "offer refugees and migrants a comfort in their trials," and to "look after them with special care and unremitting aid." https://goo.gl/9whnYr. In 1965, The Second Vatican Council called upon the national conferences of bishops to pay particular attention to the "migrants, exiles and refugees," often "not adequately cared for by the ordinary pastoral ministry." *Christus Dominus*, no. 18, https://goo.gl/aSN9Tm. Three decades later, Pope John Paul II recognized that an "atmosphere of welcoming is increasingly necessary," as "profoundly

evidenced in the problem of millions of refugees and exiles," and "intolerance toward the person whose only 'fault' is a search for work and better living conditions outside his own country." Message of John Paul II for Lent 1998 (Sept. 9, 1997), https://goo.gl/Tydy7r.

Most recently, Pope Francis has highlighted the "moral imperative" of furthering these directives. Address to Participants in the 6th International Forum on Migration and Peace (Feb. 21, 2017), https://goo.gl/HXiPgA. Drawing on prior teaching of the Church, Pope Francis has called upon Catholics to "respond to the many challenges of contemporary migration with generosity, promptness, wisdom and foresight," by promoting "social and professional inclusion" and "integrating migrants and refugees." Message of His Holiness Pope Francis on the 104th World Day of Migrants and Refugees 2018 (Aug. 15, 2017), https://goo.gl/jfeBuJ.

As Archbishop Joseph Kurtz (then-President of the Conference) explained at the height of the Syrian refugee crisis: "Regardless of their religious affiliation or national origin, these [individuals] are all human persons—made in the image of God, bearing inherent dignity, and deserving our respect and care and protection by law from persecution." Statement of Archbishop Joseph Kurtz of Louisville, KY and President of USCCB on the Syrian Refugee Crisis (Sept. 10, 2015), https://goo.gl/NErwZR.

3. In light of these traditions and teachings, the Catholic Church in the United States has long provided critical social services to migrants and refugees.

It has participated in the federal government's resettlement program since it was formally established in the years following World War II, and has assisted in the resettlement of well over one million refugees since its inception. The early years of the program focused primarily on Central and Eastern Europe and the resettlement of predominantly Christian and Jewish refugees. The geographic expansion of the program in subsequent decades to areas including Africa, Asia, and the Middle East brought with it an increase in the number of non-Christian and non-Jewish refugees. Most recently, in 2016, the number of Muslim refugees resettled into the United States outpaced the number of Christian refugees. *See* Jie Zong & Jeanne Batalova, Migration Policy Inst., *Refugees and Asylees in the United States* (June 7, 2017).

The Catholic Church has remained committed to the well-being and successful resettlement and integration of migrants and refugees without regard to their religious identity. The U.S. Conference of Catholic Bishops, in collaboration with Catholic dioceses across the United States, has made services to migrants and refugees a key part of its principles and its programming. Hundreds of parishes and Catholic Charities agencies assist refugees and other migrants every year in various ways.

C. The Church, Through Its Pastoral Ministry to Refugees, Has Witnessed Directly the Suffering Caused By the Discriminatory Executive Order.

1. In light of these teachings and the Catholic Church's long-standing commitment to migrants and

refugees of all faiths, *amici* are compelled to speak out clearly against the injustice of this Executive Order.

After enactment of the original Executive Order, Bishop Joe S. Vásquez, the chairman of the Committee on Migration, reaffirmed the Conference's commitment to "assisting all those who are vulnerable and fleeing persecution, regardless of their religion." USCCB Committee on Migration Chair Strongly Opposes Executive Order Because It Harms Vulnerable Refugee and Immigrant Families (Jan. 27, 2017), https://goo.gl/Fbh5Aq. He reminded Catholics that "by helping to resettle the most vulnerable, we are living out our Christian faith as Jesus has challenged us to do." *Ibid.* In particular, the Conference "believe[s] it is possible to simultaneously provide for the security of our country and have a humane refugee policy that upholds our national heritage and moral responsibility." USCCB Chairman Welcomes Ninth Circuit Decision Upholding Preliminary Injunction on Refugee Resettlement Pause and Travel Ban (June 13, 2017), https://goo.gl/UgtZiz.

In July 2017, after United States refugee admissions reached the Executive Order's cap of 50,000, Bishop Vásquez professed his "deep[] concern about the human consequences of this limitation and its impact on vulnerable refugees such as unaccompanied refugee children, elderly and infirm refugees, and religious minorities." U.S. Bishops Chairman Urges Administration to Raise Cap on Refugee Admissions (July 14, 2017), https://goo.gl/VSgzL6. "Now, these vulnerable populations will not be able to access needed protection and will continue to face danger and exploitation." *Ibid.*

2. *Amici* also have direct, firsthand experience with the Executive Order's human toll. *See* USCCB, *Those We Serve*, "Refugees," https://goo.gl/jNUsr8. The story of Bassam Osman, a thirty-six-year-old married father of five who fled the Syrian civil war for a better life in the United States, exemplifies the tragic consequences of the Executive Order. Osman fled Aleppo with his seriously ill daughter in December 2011, eventually uniting with his family in a United Nations camp in Turkey. *See* Associated Press, *Syrian Refugee Finds His Place at Ohio Shoe Repair Shop*, Crux, July 5, 2017, goo.gl/G18a1N. After several years of "intense vetting involving five interviews and document searches," the Conference and its affiliates helped Osman and his family resettle in Cincinnati, Ohio. *Ibid.* Osman and his family arrived just "six months before the Trump administration announced a ban to prevent most travel from Syria and six other predominantly Muslim countries." *Ibid.* Osman and his family have thrived in Cincinnati, where he has become a valued employee at a shoe repair factory and his children are learning English and adapting to American life. *Ibid.*

But because of the Executive Order, other Syrian refugee families will not be so lucky—even if they have already been approved to resettle in the United States. As Ashley Feasley, Policy Director for the Office of Migration and Refugee Services, explained, "[t]hese people have travel documents, they are ready to go . . . . They have relationships with the resettlement offices in the cities they were to be resettled in. It would be heartbreaking and administratively inefficient if they are not able to complete their journey of seeking refuge." Rhina Guidos, *As the Partial Travel*

Ban Nears, Agencies Worry About Refugees in Limbo, Crux, July 5, 2017, goo.gl/2KPU6F.

The Executive Order also prevents the Conference from helping unaccompanied minors fleeing persecution. The Conference is one of two refugee resettlement agencies—along with Lutheran Immigration Refugee Services—authorized by the U.S. Department of State to help the Unaccompanied Refugee Minors Program identify children in need of resettlement and facilitate their placement with foster families across the country. *See* USCCB, *Children and Migration*, https://goo.gl/ZRXaQA. These foster families are critical to helping the most vulnerable refugees start a new life in America.

Tianna and Todd Rooney are one such example. *See* Tianna Rooney & Todd Rooney, *President Trump's Refugee Ban Is Splitting Our Family Apart*, Wash. Post, Aug. 28, 2017, http://wapo.st/2xqldJy. In February 2017, working with Lutheran Immigration Refugee Services, they decided to foster a young boy named "K.," who had fled Eritrea when he was fourteen years old to escape military conscription. But because foster parents "are not considered part of a 'bona fide' relationship, and neither are the agencies that facilitated [the Rooneys'] connection to K.," K. is stranded in a refugee camp in Egypt. *Ibid.* The Rooneys have devoted months to preparing for K.'s arrival, furnishing his room with books and clothes and reserving him a place at their local high school. But "K's room remains empty." *Ibid.*

Similarly, Irene Stevenson became a certified foster parent for an unaccompanied minor refugee after "thinking about literally the millions of children who

have no family, have no home, who are completely alone." Justin Wm. Moyer, *Trump's Travel Ban Is Leaving Orphans Stuck in Refugee Camps*, Denver Post, July 28, 2017, goo.gl/4GjoVY. After six months of training, she cleared out a spare bedroom in her Washington home for A.A., a Somali girl who fled to Kenya in 2004 after war broke out. *Ibid.* But even though A.A. was approved to live with Stevenson, she remains in Kenya—where aid workers fear she will be targeted as an ethnic minority—as a result of the Executive Order. *Ibid.*

These stories are not outliers. The Executive Order has now "stranded more than 100 refugee children who were already matched to waiting American foster families." Ellen Knickmeyer, *Trump's Travel Bans Keep Orphans from US Foster Families*, Boston Globe, July 31, 2017, https://goo.gl/WFX684. Of these, the Executive Order means that thirty children the Conference itself was working with are stranded.

If allowed to stand, the Executive Order will prevent countless other vulnerable refugees—including children—from escaping persecution and starting a new life with the help of resettlement services from organizations like the Conference. Such cruel and inhumane treatment, denying refugee children life-saving entry to the United States based on an Executive Order clearly motivated by anti-religious bias, is both un-Catholic and un-American. It is also unconstitutional, and it is incumbent upon this Court to say so.

CONCLUSION

This Court should strike down the Executive Order as a violation of the Free Exercise Clause of the First Amendment.

Respectfully submitted.

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